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Inc. and Hanson Permanente Cement, Inc.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

OUT OF DISTRICT & BANKRUPTCY
CASE

KAISER GYPSUM COMPANY, INC.,
and HANSON PERMANENTE CEMENT,
INC. (f/k/a Kaiser Cement Corporation),

Debtors.

KAISER GYPSUM COMPANY, INC.,
and HANSON PERMANENTE
CEMENT, INC. (f/k/a Kaiser Cement
Corporation),

Plaintiffs,

Case No. 00-99999-rld7

Adv. Proc. No. 16-03127-rld

Chapter 11

DECLARATION OF CHARLES E.
McCHESNEY II

v.
AIU INSURANCE COMPANY et al.,
Defendants.

I, Charles E. McChesney II, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Vice President, the Secretary, and a Director of both Kaiser Gypsum Company, Inc. (“Kaiser Gypsum”) and Hanson Permanente Cement, Inc. (“Kaiser Cement”; collectively with Kaiser Gypsum, “the Debtors”), which are Plaintiffs in the above-captioned lawsuit (“Coverage Action”). I have held these positions with the Debtors since October 1, 2010.

2. I am also a Vice President, the Secretary, the Chief Legal Counsel, and a Director of Three Rivers Management, Inc. (“TRMI”), an affiliate of the Debtors, and have served in those capacities since October 1, 2010. Prior to that time, I was an Assistant Secretary of TRMI and have been an employee of TRMI since May 2005. Pursuant to a contract with Kaiser, TRMI provides asbestos and environmental liability management services for, and acts as agent on behalf of, each of the Plaintiffs.

3. Prior to my employment with TRMI, I was employed by K&L Gates LLP as an attorney.

4. I earned a bachelor of arts degree from Cornell University in 1992. I also earned a master of arts degree in public policy and management from The Ohio State University in 1998. Further, I earned a juris doctorate degree from The Ohio State University in 1999. I have been licensed to practice law since 1999 and have been employed as legal counsel in either private practice or as in-house counsel since 1999. I have been involved in management of

Kaiser's asbestos and environmental liabilities for over seven years. I reside in the Commonwealth of Pennsylvania.

5. I submit this declaration in support of the Debtors' Opposition to the Motion to Transfer and the Debtors' Motion to Remand.

6. Except as otherwise indicated, all facts set forth in this declaration are based upon: (a) my personal knowledge; (b) information supplied to me by other members of the Debtors' management or the Debtors' professionals; (c) my review of relevant documents; and/or (d) my opinion based on my experience and knowledge of the Debtors' operations and financial condition. If called upon to testify, I could and would testify competently to the facts set forth herein.

I. Kaiser's Corporate Structure and Operations

7. Kaiser Cement is an Arizona corporation with its headquarters and principal place of business in Irving, Texas.

8. Kaiser Cement is the parent company of Kaiser Gypsum. In 1952, Kaiser Cement formed Kaiser Gypsum, then a California corporation, as a new, wholly-owned subsidiary. As a result of a later merger, Kaiser Gypsum Company became a Washington corporation. On May 23, 2016, Kaiser Gypsum changed its state of incorporation from Washington to North Carolina.

9. Kaiser Gypsum's principal place of business is in Irving, Texas.

10. The Debtors' corporate documents relating to its historical operations, including those at the site in St. Helens, Oregon (the "St. Helens Site") and at the several sites where it formerly operated at or near the Lower Duwamish Waterway in Seattle, Washington (the "LDW Site") are stored in various locations, including Portland, Oregon; Vancouver, Washington, Oakland, Sacramento, San Diego, and Los Angeles, California; Dallas, Texas; Seattle, Washington and Pittsburgh, Pennsylvania.

II. Evidence Relevant to the Insurance Coverage Action

11. The Coverage Action involves two sites, the St. Helens Site in Oregon and LDW Site in Washington.

12. As a courtesy and pursuant to non-disclosure agreements, the Debtors informed their insurers of the commencement of this action on September 29, 2016. The London Market insurers filed a competing action against only Kaiser Cement in California the next day, mere minutes before the Debtors filed their voluntary petitions.

13. Due to the respective locations of the St. Helens Site and the LDW Site, the vast majority of fact witnesses (and likely some of the experts) who can be expected to testify regarding the Sites are also in Oregon and Washington.

14. Specifically with respect to the St. Helens Site, the only known fact witness with knowledge of the Site's historical operations is a long-term resident of Oregon, who has lived in Oregon since at least the early 1960s.

15. Most of the environmental consultants involved in the investigation and remediation of the St. Helens Site are located in Portland, Oregon.

16. As best as I have been able to ascertain, only one environmental consultant involved in the investigation and remediation of the St. Helens Site resides in North Carolina.

17. The majority of documents related to environmental investigation, conditions, and cleanup at the St. Helens Site are located in Oregon.

18. The Debtors' document repository for the LDW Site is managed by its legal counsel in the LDW Site allocation process and is situated in Vancouver, Washington.

19. While historical documents relating to St. Helens Site operations and the various LDW Site locations where the Debtors operated are located in several different locations (including Portland, Oregon and Vancouver, Washington), none of those documents are located in North Carolina.

20. The Debtors' insurance coverage attorneys are located in Portland, Oregon, and Pittsburgh, Pennsylvania.

21. As best as I have been able to ascertain, none of the Debtors' approximately 50 primary and excess insurers are located in North Carolina.

22. As best as I have been able to ascertain, none of the relevant insurance policies were negotiated or executed in North Carolina.

23. Certain of the Debtors' approximately 50 primary and excess insurers currently are party to an asbestos insurance coverage case involving Kaiser that is on appeal in a district other than the Western District of North Carolina.


24. As best as I have been able to ascertain, the Debtors do not currently anticipate having any unwilling witnesses in this Coverage Action or needing to subpoena any unwilling witnesses outside of the subpoena powers available in Oregon.

25. The Debtors do not believe that their bankruptcy estates would receive any benefit from having this Coverage Action heard by the Bankruptcy Court for the Western District of North Carolina.

26. The Debtors believe that transferring venue of the Coverage Action to the Western District of North Carolina would increase the costs to the estate of ensuring the availability of relevant witnesses and by potentially bifurcating aspects of the case between the Bankruptcy Court and the District Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2016.



Charles E. McChesney II

I certify that I served the foregoing Declaration of Charles E. McChesney II on:

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by the following indicated method or methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☐ **Facsimile communication device.**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Overnight courier, delivery prepaid.**

DATED this 3rd day of November, 2016.

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